

35 USC § 112, second paragraph

The rejection of claims 1-17, 21-24, 28-30, and 33 based on the term "sufficient quantity of an ethanol" is obviated by the amendments to claim 1. The amendments to claim 1 do not narrow the scope of the claim.

The rejection of claims 1-17, 21-24, 28-30, and 33 based on the term "recreationally relevant" is obviated by the amendments to claim 1. The amendments to claim 1 do not narrow the scope of the claim.

The rejection of claims 2-4 is rendered moot by the cancellation of claims 2-3 and amendments to claim 4.

The rejection of claim 4 based on the term "easily rupturable" is obviated by the amendment to claim 4. This amendment does not narrow the scope of the claim.

The rejection of claim 5 based on the term "similarly shaped" is obviated by the amendment to claim 5. This amendment does not narrow the scope of the claim.

The rejection of claim 6 based on the term "approximately" is obviated by the amendment to claim 6. The removal of this term, since it is indefinite, does not act to limit the scope of claim 6.

The rejection of claims 8-12 is obviated by the amendments above removing such term from these claims. Since this term is indefinite, removal of the term "about" does not act to narrow the scope of these claims.

The rejection of claim 15 is obviated by the amendment to claim 15. This amendment does not limit the scope of claim 15.

The rejection of claim 17 is rendered moot by the cancellation of claim 17.

The rejection of claim 21 for use of the term various concentrations is obviated by the amendments to claim 21. These amendments do not act to narrow the scope of the claim.

The rejection of claim 28 for use of the phrase "appearance of a garnish" is moot in light of the cancellation of this claim.

Applicants traverse the rejection of claim 29. It is common knowledge what an olive looks like. One skilled in any art would know whether an object looked like an olive or not. Reconsideration is requested.

The rejection of claim 30 is rendered moot in light of the cancellation of this claim.

The rejection of claim 31 is obviated by the amendments to this claim. As the objected to terms are indefinite, removal of such terms does not act to narrow the scope of the claim.

35 USC § 102 Rejection

Claims 1-5, 7-10, 13-17, and 21 are rejected under 35 USC 102 (b) as being anticipated by Brox. Applicants assert that the amendments to the base claim, claim 1, obviate this rejection. Applicants reiterate herein there arguments provided in Applicants' response dated 11/28/2001, and further point out that nowhere does the Brox reference teach or suggest the volume of a capsule that would be recreationally relevant as defined in claim 1 as amended. That is, nowhere does Brox even consider a capsule containing at least 5 mls of an ethanol composition. The Brox reference teaches a fill weight of 200 to 400 milligrams. See Examples. Considering the fact that 1 ml of water equals 1 gram. The overall fill volumes taught in Brox are extremely below the lowest volume encompassed in claim 1. Accordingly, Brox does not teach all of the elements of claim 1 as required to be an anticipatory reference. Since the remaining claims depend from claim 1 and are therefore construed to contain the limitations of claim 1, this rejection is obviated with respect to dependent claims as well. Reconsideration of this rejection is respectfully requested.

35 USC § 103 Rejections

Claims 1-5, 7-17 and 21 are rejected as obvious over Sanker et al. in light of Handbood of perfumes and flavors. Applicants assert that the amendments to claim 1 obviate this rejection. Applicants reiterate herein the arguments asserted in Applicants' response dated 11/28/2001. Furthermore, Applicants assert that it cannot be said that

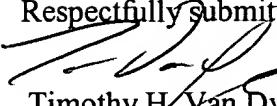
Sanker teaches or suggests a capsule that contains a volume above 2 milliliters. Sanker teaches a range of quantities that can be included in its capsule at column 5, lines 32-35. The maximum weight that Sanker contemplates including in its capsule is 2000 mg or roughly 2 milliliters. This volume is less than half of the volume recited in claim 1 as amended. Sanker addresses a problem of adding flavors to beverages; it does not address the need for an easy transportable, chewable capsule designed as a novel means to consume recreational quantities of alcohol. Therefore, it makes sense that Sanker does not contemplate or suggest a capsule containing the volume of an alcohol composition that is defined in claim 1. Because the Handbook of perfumes and flavors does not address the deficiencies of the Sanker reference, neither the Sanker and/or the Handbook render claim 1 and its dependent claims obvious. Applicants respectfully request the reconsideration and withdrawal of this rejection.

Claims 6 and 28-30 are rejected as obvious over Sanker. Applicants respectfully traverse. As these claims depend from claim 1, the preceding reasons for patentability apply to this rejection as well. Reconsideration is requested.

Claims 23-24 are rejected as obvious over Sanker in view of McMahon. Applicants respectfully traverse. As these claims depend from claim 1, the foregoing arguments apply to this rejection as well. Furthermore, McMahon does not overcome the deficiencies of the Sanker reference. Reconsideration is respectfully requested.

Applicants believe that all remaining claims are in a condition for allowance. Applicants invite the Examiner to call the undersigned if clarification is needed on any aspect of this response. In addition, the Applicants request that the Examiner call the undersigned to arrange a telephonic interview if the Examiner believes that not all grounds for rejection have been addressed and overcome.

Respecifuly submitted,


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VERSION WITH MARKINGS
TO SHOW CHANGES MADE

1. (amended) An ingestible, chewable, or aqueous soluble non-toxic capsule containing [a sufficient quantity] 5 milliliters of an ethanol composition to facilitate transport, storage, delivery and consumption of recreationally relevant quantities of such alcohol composition wherein said ethanol composition comprises 5 percent of ethanol or more.

Cancel claims 2 and 3, without prejudice

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5. (amended) The capsule according to claim 1 [comprising an easily transportable recreationally relevant quantity of ethanol] wherein said capsule is soluble, swells, softens, bursts, becomes permeable, or [is easily] ruptured when contacted with aqueous solutions.

5. (amended) The capsule according to claim 1 in the shape of spheres, ellipses, elongated tubes, sports mascots, logos, sporting goods, animals and humans or portions thereof, or any range of similarly shaped capsule] composed of gelatin, alginate, xanthan gum, guar gum chitin, chitosin, gellan gum, agar, carrageenan, albumin, starch, carboxymethylcellulose (CMC) or mixtures thereof.

6. (amended) The capsule according to claim 5 wherein said capsule contains within an enclosed, sealed cavity, [approximately] 0.5 to 1.5 ounces of an ethanol composition.

8. (amended) The capsule according to claim 6 wherein said alcohol is between [about] 5% and [about] 95% ethanol.

9. (amended) The capsule according to claim 6 wherein said alcohol is between [about] 25% to [about] 70% ethanol.

10. (amended) The capsule according to claim 6 wherein said alcohol is between [about] 40% and [about] 50% ethanol or [about] 50% and 70% ethanol.

11. (amended) The capsule according to claim 1 wherein the total internal volume of the capsule is between [about 2.5] 5 milliliters to about 50 milliliters.

12. (amended) The capsule according to claim 1 wherein the total internal volume of the capsule is between [about] 5 milliliters and [about] 20 milliliters.

15. (amended) The capsule according to claim 14 designed for breakage, crushing, or dissolving in the consumer's mouth [and optionally for subsequent expulsion, or for easy swallowing].

Cancel claim 17, without prejudice

21. (amended) The capsule according to claim 1 wherein the encapsulating material is capable of sustaining [various concentrations of] 5 percent or more ethanol concentration within the internal compartment, without dissolution into the ethanol.

Cancel claim 28, without prejudice.

Cancel claim 30 without prejudice.

31. (amended) The capsule according to claim 1 comprising a wax-based capsule containing between [about 2.5] 5 and 50 cc of optionally flavored ethanol [of pure or substantially pure or diluted ethanol].